

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PATRICIA CROUSE,

Plaintiff,

v.

LOWE'S HOME IMPROVEMENT
WAREHOUSE, INC., *et al.*,

Defendants.

Civil No. 13-CV-1274-JM (WVG)

ORDER DENYING JOINT MOTION
TO EXTEND DATE FOR
COMPLETION OF DEPOSITIONS
OF DEFENDANT'S EXPERTS

[DOC. NO. 27]

Pending before the Court is the parties' Joint Motion to Extend the Date for Completion of Depositions of Defendant's Experts. (Doc. No. 27.) Finding no good cause to grant the extension request, the Court hereby DENIES the parties' Joint Motion.

I. BACKGROUND

On June 9, 2014, the parties filed a Joint Motion to Continue the Mandatory Settlement Conference ("MSC") and Expert Disclosure Date. (Doc. No. 25.) In their June 9, 2014, Joint Motion, the parties requested that the Court continue the MSC so that they could complete the depositions of Plaintiff's non-retained and treating surgeon, Dr. Eric Stark, and Defendant's retained expert, Dr. Christopher Behr. *Id.* at 2. The parties noted that the "testimony of Dr. Stark and Dr. Behr are crucial to the parties' abilities to evaluate and

1 understand the causal connection between Plaintiff's knee replacement surgery and the
 2 injuries sustained as a result of the subject incident. Completion of the depositions of Dr.
 3 Stark and Dr. Behr will allow the parties to determine their respective positions pertaining
 4 to the disputed knee replacement surgery, which will promote more meaningful settlement
 5 discussions at the settlement conference." Id. at 2-3. The Court granted the parties' request
 6 to continue the MSC. (Doc. No. 26 at 1-2.)

7 The Court also stated that, because it granted the parties' request to continue the MSC,
 8 they would have ample time to complete the depositions of their experts prior to the MSC.
 9 (Doc. No. 26 at 2.) Therefore, the Court denied the parties' request to continue the deadline
 10 to exchange expert reports. Id.

11 **II. RELEVANT LAW**

12 Pursuant to Federal Rule of Civil Procedure ("Rule") 16(b)(3), a district court is
 13 required to enter a pretrial scheduling order that "must limit the time to join other parties,
 14 amend the pleadings, complete discovery, and file motions." Fed.R.Civ.P. 16(b)(3)(A). The
 15 scheduling order "controls the course of the action unless the court modifies it[]" and Rule
 16 "16 is to be taken seriously." Rule 16(d); Janicki Logging Co. v. Mateer, 42 F.3d 561, 566
 17 (9th Cir.1994). As the Eastern District of California has stated, parties must "diligently
 18 attempt to adhere to [the court's] schedule throughout the subsequent course of the
 19 litigation." Jackson v. Laureate, Inc., 186 F.R.D. 605, 607 (E.D.Cal.1999). "A scheduling
 20 order 'is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded
 21 without peril.'" Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 610 (9th Cir.1992)
 22 (quoting Gestetner Corp. v. Case Equip. Co., 108 F.R.D. 138, 141 (D.Me.1985)).

23 Rule 16(b)(4) "provides that a district court's scheduling order may be modified upon
 24 a showing of 'good cause,' an inquiry which focuses on the reasonable diligence of the
 25 moving party." Noyes v. Kelly Servs., 488 F.3d 1163, 1174 n. 6 (9th Cir.2007); citing
 26 Johnson, 975 F.2d at 609. In Johnson, the Ninth circuit explained,

27 ... Rule 16(b)'s "good cause" standard primarily concerns the diligence of the
 28 party seeking the amendment. The district court may modify the pretrial
 schedule "if it cannot reasonably be met despite the diligence of the party
 seeking the extension." Fed .R.Civ.P. 16 advisory committee's notes (1983)

1 amendment) ... [T]he focus of the inquiry is upon the moving party's reasons
2 for seeking modification.... If that party was not diligent, the inquiry should
3 end.

4 Johnson, 975 F.2d at 609.

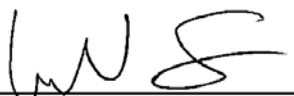
5 In part, the "good cause" standard requires the parties to demonstrate that "noncom-
6 pliance with a Rule 16 deadline occurred or will occur, notwithstanding her diligent efforts
7 to comply, because of the development of matters which could not have been reasonably
8 foreseen or anticipated at the time of the Rule 16 Scheduling conference ..." Jackson, 186
9 F.R.D. at 608, emphasis added.

10 **III. RULING**

11 The Court finds that the parties' Joint Motion fails to demonstrate any good cause for
12 granting an extension of the expert discovery cutoff date. The only reason provided to the
13 Court in support of the extension request is that Plaintiff would like to defer the costs
14 associated with deposing all defense experts prior to the MSC. (Doc. No. 27 at 2.) As this
15 Court stated in its June 10, 2014, Order, the Court appreciates that the parties seek to avoid
16 certain litigation costs. (Doc. No. 26 at 2.) However, the Court granted the parties' June 9,
17 2014, Joint Motion, in an effort to assist the parties in avoiding the costs associated with
18 attending the MSC without a full assessment of the connection between Plaintiff's injuries
19 and her knee replacement surgery. (Doc. No. 26 at 2; citing Doc. No. 25 at 3.) Plaintiff filed
20 this lawsuit and must be prepared to fully litigate her case, and to adhere to the Court's
21 scheduling order. Therefore, because the parties have not demonstrated good cause to grant
22 the extension request, the Court hereby DENIES the parties' Joint Motion.

23 IT IS SO ORDERED.

24 DATED: August 14, 2014

25 
26 Hon. William V. Gallo
27 U.S. Magistrate Judge
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